

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
CITY COUNCIL CHAMBERS
October 28, 2008**

1. Present

Commissioners:

Sherwood Bishop, Chair
Ryan Thomason, Vice-Chair
Bill De Soto
Bill Taylor (absent)
Curtis Seebeck
Allen Shy
Cecil Pounds
Jim Stark (absent)
Randy Bryan

City Staff:

Cecil Pennington, Long Range Planning Manager
Phil Steed, Planner
John Foreman, Sr. Planning Tech.
Francis Serna, Recording Secretary

Others Present: Jennifer J. Yzaguirre, Drew Macyer, Trey Shelton, Mags Morris, Barbara Grahmann, M. Goldsmith, David J. Wood, Cameron Freberg, Carlos Hernandez, Mario C. Perez, American L. Perez, Melissa Perez, Jason Baker, John C. Foster, Will Parrish, Steven Grissen, Joel Bock, Ed Theriot and others.

2. Call to Order and Announce a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:00 p.m. on Tuesday, October 28, 2008 in the Council Chambers of the City of San Marcos City Hall, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Bishop welcomed the audience and the television viewers.

4. Executive Session

There were no discussions.

5. Citizen Comment Period

No one signed up to speak.

6. CUP-08-32. Hold a public hearing and consider a request by Carlos Hernandez, on behalf of Robert Rodriguez, for a Conditional Use Permit to allow a new accessory dwelling in a Single Family (SF-6) Zoning District located at 416 Broadway.

John Foreman advised the Commission that the property is located in a Single Family (SF-6) zoning district and that the applicant has proposed to build an accessory dwelling unit attached to the existing house via a breezeway. He explained that the current owners will move into the accessory dwelling unit and one of their children will move into the main structure. Mr. Foreman added that the Commission has previously approved similar request with conditions. The proposal meets Land Development Code requirements. He pointed out that the concern regarding the total floor area exceeding 50% of the square footage of the livable area of the premises, or 5% of the lot area, whichever is smaller has been resolved by the connected the proposed dwelling unit to the main structure. Therefore the proposed structure becomes part of the main structure and is not subject to the requirement. Mr. Foreman noted that the property has adequate off-street parking on the front and rear driveways, and no further parking will be required. Staff recommended approval of the Conditional Use Permit with the conditions that the permit is granted to the applicant and the current owner and is required to be renewed if the property is sold; the accessory dwelling may not be rented separately from the main residence; the single-family occupancy restriction applies to the entire property; and there be no separate utility meters.

Chair Bishop opened the public hearing. Carlos Hernandez owner of Bazan & Hernandez Architecture stated he was representing the owner and was available to answer questions. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to approve the Conditional Use Permit with the conditions that the permit is granted to the applicant and the current owner and is required to be renewed if the property is sold; the accessory dwelling may not be rented separately from the main residence; the single-family occupancy restriction applies to the entire property; and there be no separate utility meters. The motion carried. Commissioner Stark and Taylor were absent.

7. PC-08-29(01). Consider a request by Ed Theriot with ETR Development Consulting, LLC, on behalf of Surecap LLC, for approval of a concept plan of the project known as Hunters Crossing; located on the northeast corner of the intersection of Wonder World Drive and Hunter Road.

Phil Steed advised the Commission that the 17.76 acre tract is proposed to be platted into four lots for proposed General Commercial, Mixed Use, and Multi-Family development. The first phase is Lot 1, a 2.12 acre trace being the proposed site of a CVS Pharmacy. He explained that water, wastewater, and electrical services are available for the property. Mr. Steed pointed out that the surrounding land uses are compatible with the proposed land use of the property. In addition, the concept plan is subject to all Land Development Code requirements and has been reviewed for consistency with existing City Ordinances and policies. He stated that the Environment and Engineering Department has approved the Traffic Impact Analysis and has deemed the Watershed Protection Plan Phase 1 as substantially complete. Staff recommended approval of the request as submitted.

Commissioner Pounds asked what the time frame was for a zoning change and if the Commissioners would review a current Traffic Impact Analysis at the time of a zoning change to multi family. He pointed out that the signage on the property indicated apartment development.

Ed Theriot, with ETR Development Consulting, stated that the concept plan indicates Commercial development for all four parcels at this time. He explained that the concept plan would be followed up with a Final Plat application in the future development process lot 1, which is the initial lot to be developed. Mr. Theriot continued to say that in the future, the remaining 12 acre tract may come before the Commission for a potential rezoning to Multi Family.

Cecil Pennington pointed out that a revised Traffic Impact Analysis will be completed when a zoning change application for multi family has been submitted.

Commissioner Bryan asked if the large trees would remain on the property.

Ed Theriot with ETR Development Consulting stated that two small trees would be removed and that the large trees would remain as indicated on the site plan for Lot 1.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to approve the request. The motion carried unanimously. Commissioner Taylor and Stark were absent.

8. PVC-08-06. Hold a public hearing and consider a request by Thor Thornhill with S. Craig Hollmig, Inc, on behalf of Mario and America Perez, for a variance to Section 1.6.5.5. (a) (2) (e) of the Land Development Code requiring that a plat meet any County standards to be applied under an Interlocal Agreement between the City and a County under Texas Local Government Code Chapter 242, where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City and in the County; the location of the property is 8173 Old Bastrop Road, Comal County.

Phil Steed advised the Commission that the property is located outside the city limits on the southeastern edge of the ETJ in Comal County. He pointed out that an aerial map was included in their reading files which indicated the surrounding land use designations. Mr. Steed stated that the owner has proposed to replat lot 2 and establish lot 2A and 2B. He added that both residences are currently served by Crystal Clear Water Supply Corporation. The Comal County Subdivision Rules and Regulations require that each lot within a proposed subdivision and not served by an approved public water supply have a surface area of at least 5.01 acres and that a Certification of Groundwater Availability for Platting Form be submitted for each lot. By Comal County regulations, Crystal Clear Water Supply Corporation is not an approved public and water supply. Mr. Steed stated that the applicant is requesting a variance to the Comal County Subdivision Rules and Regulations. He indicated that staff recommended denial of the request because staff does not believe the request meets the Criteria for Approval as cited in the Land Development Code. He pointed out that if the Planning and Zoning Commission approved the request, staff will submit the variance to the Comal County Commissioner Court for ratification as stipulated in our interlocal agreement.

Chair Bishop opened the public hearing. Thor Thornhill with S. Craig Hollmig pointed out that the business is an Inc. not LLC. He explained that at the time of the original plat, the property was stipulated by Comal County Rules and Regulations. Although, now the property is also in the San Marcos ETJ and felt that additional restrictions applied to the property. Mr. Thornhill stated that the applicant intends to give one lot to his son. He also mentioned that he spoke to the Comal County Commissioners and was advised that they would approve the request. There were no additional citizen comments and the public hearing was closed.

Chair Bishop pointed out that an aerial photo of the property was included in their reading files. In addition, he mentioned that the property currently has two water taps. Therefore, an additional water tap would not be necessary.

Commissioner Bryan commented that the Commission should approve the request and allow Comal County Commissioners to make a determination of the request.

Cecil Pennington clarified that Comal County passed the water regulation in 2001 and it is possible that the regulation was not in place at the time of the original plat. He pointed out that the applicant is before the Commission because of the Interlocal Agreement with Comal County. Mr. Pennington explained that the Interlocal Agreement with Comal County states that all requests shall comply with the City of San Marcos Codes with the exception of the water availability be enforced by Comal County.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Seebeck, the Commission voted six (6) for and one (1) opposed, to approve the request for the reason that: The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land; the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner; granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property; the hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner; and the request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship. The motion carried. Commissioner Taylor and Stark were absent.

9. PVC-08-07. Hold a public hearing and consider a request by Thor Thornhill with S. Craig Hollmig, Inc., on behalf of Mario and America Perez for a variance to Section 6.7.2.1. (J) of the Land Development Code requiring that lot depth shall not exceed three times the lot width for lots platted after march 10, 1975; the location of the property is 8173 Old Bastrop Road, Comal County.

Phil Steed noted that the request is the same property discussed in the previous plat variance case. He explained that the platted lot currently has a lot depth to width ratio of 2.3. As proposed lot 2A will have a lot depth to width ratio of 4.06 and Lot 2B will have a lot depth to width ratio of 4.79. Staff recommended denial of request because the request does not meet the criteria for a variance.

Chair Bishop opened the public hearing. Thor Thornhill with S. Craig Hollmig, Inc. mentioned that the property has two houses, septic systems and water taps. He stated that the applicant wants to give one lot to his son. Mr. Thornhill commented that upon speaking to Mr. Steed, he was advised that if a public road was built the correct lot depth to width ratio would be satisfied. He felt that building a road would cost too much money and impossible for the client to achieve. He pointed out that a typical lot in New Braunfels is 60 feet. He stated he was available to answer questions. There were no additional citizen comments and the public hearing was closed.

Commissioner Shy asked for clarification enforcement of the Comal County Rules and Regulations.

Cecil Pennington explained that the lot depth to width ratio is a requirement in the San Marcos Land Development Code (LDC). He stated that the surrounding commercial properties meet the LDC Code requirements.

Thor Thornhill commented that Lot 1 adjoining the property does not meet the LDC requirements.

Cecil Pennington confirmed that the adjoining Lot 1 does not meet the LDC requirements because it is a flag lot and a road was not developed. He pointed out that flag lots are not allowed in the LDC.

Thor Thornhill explained that Comal County does not have regulations against flag lots. He added that now that they are in the San Marcos ETJ, the applicant is not allowed to have a flag lot.

The Commissioners briefly discussed the difficulty of selling a flag shaped lot.

Thor Thornhill stated that he felt it would be easier to sell a lot with a house on it, but that the applicants do not have plans on selling the property.

Commissioner Pounds inquired on the proposed location of a road.

Phil Steed explained to the Commission where a road would be developed if the applicant proposed to follow through with building the road.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Pounds, the Commission voted six (6) for and one (1) opposed, to approve request for the reason that: circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land; the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner; granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property; the hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner. The motion carried. Commissioner Taylor and Stark were absent.

10. Discussion Items:

Planning Director's Report

Cecil Pennington advised the Commission that the American Planning Association Conference has been rescheduled to February 4-7, 2009 in El Paso. He asked the Commission to contact Francis Serna by November 24, 2008 if they are interested in attending the conference.

Cecil Pennington announced that the Commissioner Seebeck, Shy and Bishop's term would expire in December 2008. He informed them to submit a Volunteer Interest Form to the City Clerk's Office if they are interested in a reappointment to the Commission. Mr. Pennington stated that the City Council will consider Board and Commission appointments on the November 18, 2008 City Council meeting.

Commissioners' Report

Chair Bishop stated that the American Planning Association Conference is very educational and encouraged the new Commissioners to attend.

11. Consider approval of the minutes from the Regular Meeting of September 23, 2008.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Seebeck, the Commission voted six (6) for, zero (0) opposed, and Commissioner Pounds abstained, to approve the Regular Meeting Minutes of October 14, 2008 with corrections. The motion carried. Commissioner Taylor and Stark were absent.

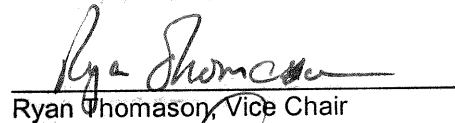
12. Questions and answers from the Press and Public.

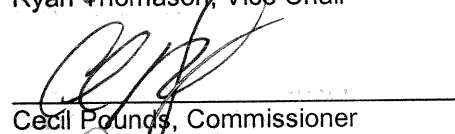
There were no questions from the press and public.

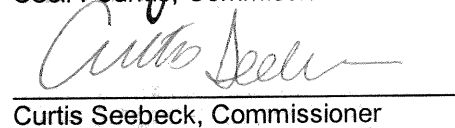
13. Adjournment

MOTION: Upon a motion made by Commissioner Thomason and second by Commissioner Seebeck the Commission voted seven (7) for and none (0) opposed, to adjourn the regular meeting of the Planning and Zoning Commission at 6:46 p.m. on Tuesday, October 28, 2008. The motion carried unanimously. Commissioner Taylor and Stark were absent.

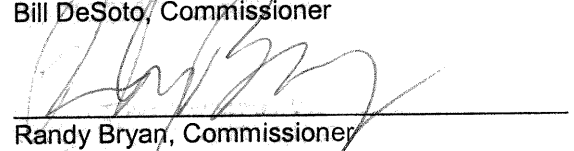

Sherwood Bishop, Chair


Ryan Thomason, Vice Chair


Cecil Pounds, Commissioner

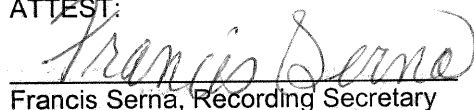

Curtis Seebeck, Commissioner


Bill DeSoto, Commissioner


Randy Bryan, Commissioner


Allen Shy, Commissioner

ATTEST:


Francis Serna, Recording Secretary